

The Honorable Richard S. Lasnik



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12-CR-00262-INFO

MAR 13 2013

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEP¹

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRED F. FRINK,

Defendant.

NO. CR12-262RSL

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, Defendant, FRED F. FRINK, and his attorney, Gilbert Levy, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. The Charge(s). Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters his plea of guilty to the following charge contained in the Indictment.

a. False, Fictitious, or Fraudulent Claims, as charged in Count 1, in violation of Title 18, United States Code, Section 287.

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering his plea of guilty, he

1 will be placed under oath. Any statement given by Defendant under oath may be used by the
2 United States in a prosecution for perjury or false statement.

3 **2. Elements of the Offense.** The elements of the offense of False, Fictitious, or
4 Fraudulent Claims, as charged in Count 1, in violation of Title 18, United States Code, Section
5 287, are as follows:

6 First, the Defendant knowingly presented a false claim against the United States to
7 an agency of the United States;

8 Second, the claim was based on a false or fraudulent material fact; and

9 Third, the Defendant acted intentionally and knew that the claim was false and fraudulent.

10 **3. The Penalties.** Defendant understands that the statutory penalties for the offense
11 of False, Fictitious, or Fraudulent Claims, as charged in Count 1, are as follows:

12 a. Count 1 (False, Fictitious, or Fraudulent Claims): Imprisonment for up to
13 five (5) years, a fine of up to two-hundred and fifty thousand and no/100 dollars (\$250,000.00), a
14 period of supervision following release from prison of up to three (3) years, and a special
15 assessment of one hundred and no/100 dollars (\$100.00). If Defendant receives a sentence of
16 probation, the probationary period could be up to five (5) years. Defendant agrees that the
17 special assessment shall be paid at or before the time of sentencing.

18 Defendant understands that supervised release is a period of time following imprisonment
19 during which he will be subject to certain restrictions and requirements. Defendant further
20 understands that if supervised release is imposed and he violates one or more of its conditions,
21 Defendant could be returned to prison for all or part of the term of supervised release that was
22 originally imposed. This could result in Defendant's serving a total term of imprisonment greater
23 than the statutory maximum stated above.

24 Defendant understands that in addition to any term of imprisonment and/or fine that is
25 imposed, the Court may order him to pay restitution to any victim of the offense, as required by
26 law.

27 Defendant agrees that any monetary penalty the Court imposes, including the special
28 assessment, fine, costs, or restitution, is due and payable immediately and further agrees to

1 submit a completed Financial Statement of Debtor form as requested by the United States
2 Attorney's Office.

3 **4. Rights Waived by Pleading Guilty.** Defendant understands that by pleading
4 guilty, he knowingly and voluntarily waives the following rights:

- 5 a. The right to plead not guilty and to persist in a plea of not guilty;
- 6 b. The right to a speedy and public trial before a jury of his peers;
- 7 c. The right to the effective assistance of counsel at trial, including, if
8 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 9 d. The right to be presumed innocent until guilt has been established beyond a
10 reasonable doubt at trial;
- 11 e. The right to confront and cross-examine witnesses against Defendant at
12 trial;
- 13 f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- 14 g. The right to testify or to remain silent at trial, at which trial such silence
15 could not be used against Defendant; and
- 16 h. The right to appeal a finding of guilt or any pretrial rulings.

17 **5. United States Sentencing Guidelines.** Defendant understands and acknowledges
18 that, at sentencing, the Court must consider the sentencing range calculated under the
19 United States Sentencing Guidelines, together with the other factors set forth in Title 18,
20 United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense;
21 (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the
22 seriousness of the offense, to promote respect for the law, and to provide just punishment for the
23 offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the
24 need for the sentence to protect the public from further crimes of the defendant; (6) the need to
25 provide the defendant with educational and vocational training, medical care, or other
26 correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the
27 need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity

1 among defendants involved in similar conduct who have similar records. Accordingly,
2 Defendant understands and acknowledges that:

3 a. The Court will determine his applicable Sentencing Guidelines range at the
4 time of sentencing;

5 b. After consideration of the Sentencing Guidelines and the factors in
6 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum
7 term authorized by law;

8 c. The Court is not bound by any recommendation regarding the sentence to
9 be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by
10 the parties or the United States Probation Department, or by any stipulations or agreements
11 between the parties in this Plea Agreement; and

12 d. Defendant may not withdraw a guilty plea solely because of the sentence
13 imposed by the Court.

14 **6. Ultimate Sentence.** Defendant acknowledges that no one has promised or
15 guaranteed what sentence the Court will impose.

16 **7. Restitution.** Defendant shall make restitution to Internal Revenue Service in an
17 amount of \$827,117.00. Said amount shall be due and payable immediately and shall be paid in
18 accordance with a schedule of payments as proposed by the United States Probation Office and
19 ordered by the Court.

20 **8. Sentencing Factors.** The parties agree that the following Sentencing Guidelines
21 provisions apply to this case:

22 a. A base offense level of six, pursuant to USSG § 2B1.1(a)(2);

23 b. A fourteen-point addition to the base offense level, pursuant to USSG
24 § 2B1.1(b)(1)(H) because the loss was more than \$400,000, but less than \$1,000,000.

25 The parties agree they are free to argue the application of any other provisions of the
26 United States Sentencing Guidelines. Defendant understands, however, that at the time of
27 sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply
28

1 additional downward or upward adjustments in determining Defendant's Sentencing Guidelines
2 range.

3 **9. Statement of Facts.** The parties agree on the following facts. Defendant admits
4 he is guilty of the charged offense.

5 a. On April 14, 2009, FRED FRINK visited an H&R Block office. He
6 provided an H&R Block employee with 1099-OID tax forms purporting to show that over a
7 million dollars in tax had been withheld on his behalf. In reality, as FRINK then knew, no such
8 tax had been withheld on his behalf. H&R Block, relying upon the representations made in the
9 forms, processed FRINK's tax return, and filed it electronically with the Internal Revenue
10 Service. Under the return, FRINK sought a \$827,117.00 tax refund, given the substantial
11 amount of money that he claimed had been withheld as tax on his behalf.

12 b. The Internal Revenue Service did not immediately detect the fraudulent
13 nature of FRED FRINK's return, and sent him a tax refund in the amount of \$827,117.00.

14 c. On May 11, 2009, an Internal Revenue Service revenue agent contacted
15 FRED FRINK about the return. In response, FRED FRINK sent the agent two fictitious money
16 orders, and did not return the money that remained from the refund. FRINK subsequently spent
17 all of the tax refund.

18 **10. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the
19 United States Attorney's Office for the Western District of Washington agrees to dismiss Counts
20 2 through 7 of the Indictment, and not to prosecute Defendant for any additional offenses known
21 to it as of the time of this Agreement that are based upon evidence in its possession at this time,
22 and that arise out of the conduct giving rise to this investigation. In this regard, Defendant
23 recognizes the United States has agreed not to prosecute all of the criminal charges the evidence
24 establishes were committed by Defendant solely because of the promises made by Defendant in
25 this Agreement. Defendant agrees, however, that for purposes of preparing the Presentence
26 Report, the United States Attorney's Office will provide the United States Probation Office with
27 evidence of all conduct committed by Defendant.

1 Defendant agrees that any charges to be dismissed before or at the time of sentencing
 2 were substantially justified in light of the evidence available to the United States, were not
 3 vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any
 4 future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

5 **11. Acceptance of Responsibility.** The United States acknowledges that if Defendant
 6 qualifies for an acceptance of responsibility adjustment pursuant to USSG § 3E1.1(a), and if the
 7 offense level is sixteen (16) or greater, his total offense level should be decreased by three (3)
 8 levels pursuant to USSG §§ 3E1.1(a) and (b), because he has assisted the United States by timely
 9 notifying the authorities of Defendant's intention to plead guilty, thereby permitting the United
 10 States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

11 **12. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if Defendant
 12 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement and
 13 Defendant may be prosecuted for all offenses for which the United States has evidence.
 14 Defendant agrees not to oppose any steps taken by the United States to nullify this Plea
 15 Agreement, including the filing of a motion to withdraw from the Plea Agreement. Defendant
 16 also agrees that if Defendant is in breach of this Plea Agreement, Defendant has waived any
 17 objection to the re-institution of any charges in the Indictment that were previously dismissed or
 18 any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Agreement, Defendant should
 20 engage in illegal conduct, or conduct that is in violation of his conditions of his release
 21 (examples of which include, but are not limited to: obstruction of justice, failure to appear for a
 22 court proceeding, criminal conduct while pending sentencing, and false statements to law
 23 enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the United States
 24 is free under this Agreement to file additional charges against Defendant or to seek a sentence
 25 that takes such conduct into consideration by requesting the Court to apply additional
 26 adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the
 27 applicable advisory Guidelines range, and/or by seeking an upward departure or variance from
 28 the calculated advisory Guidelines range. Under these circumstances, the United States is free to

1 seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded
2 by the terms of the plea agreement.

3 **13. Waiver of Appeal.** As part of this Plea Agreement and on the condition that the
4 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range (or
5 the statutory mandatory minimum, if greater than the Guidelines range) that is determined by the
6 Court at the time of sentencing, Defendant waives to the full extent of the law:

- 7 a. any right conferred by Title 18, United States Code, Section 3742 to appeal the
8 sentence, including any restitution order imposed; and
9 b. any right to bring a collateral attack against the conviction and sentence, including
10 any restitution order imposed, except as it may relate to the effectiveness of legal
11 representation.

12 Furthermore, this waiver does not preclude Defendant from bringing an appropriate motion
13 pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions of the
14 Bureau of Prisons regarding the execution of his sentence.

15 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
16 attacking (except as to effectiveness of legal representation) the conviction or sentence in any
17 way, the United States may prosecute Defendant for any counts, including those with mandatory
18 minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

19 **14. Voluntariness of Plea.** Defendant agrees that Defendant has entered into this Plea
20 Agreement freely and voluntarily and that no threats or promises, other than the promises
21 contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

22 **15. Statute of Limitations.** In the event this Agreement is not accepted by the Court
23 for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of
24 limitations shall be deemed to have been tolled from the date of the Plea Agreement to:

- 25 (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or
26 (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is
27 discovered by the United States Attorney's Office.

16. Completeness of Agreement. The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 13 day of March, 2013.

Fred Francis Frink
FRED FRANCIS FRINK
Defendant

GILBERT LEVY
Attorney for Defendant

ANDREW C. FRIEDMAN
Assistant United States Attorney


THOMAS M. WOODS
Assistant United States Attorney